

J. Shanko.



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: American Body Armor & Equipment, Inc.

File: B-236007

Date: November 3, 1989

DIGEST

1. Record provides no basis on which the General Accounting Office can conclude that samples of vehicle armoring materials submitted by the protester for testing were improperly determined to not meet all specification requirements.

2. Allegations that testing standards for armored vehicles stated in request for proposals could not be met because of weight restrictions and that there was insufficient time to obtain conforming armoring material, are untimely under the General Accounting Office's Bid Protest Regulations, since they constitute alleged solicitation defects first raised after the closing date for receipt of proposals, and in any event, are not supported by the record.

3. Allegation that the evaluation scheme in a negotiated procurement encourages bias and favoritism on the part of contracting officials because it allegedly affords a broad range of subjectivity is untimely raised after the closing date for receipt of proposals.

4. Protest allegation that contracting officials improperly disclosed confidential or competition sensitive information concerning protester's proposal is denied where protester, referring only to rumor and speculation in support of the allegation, fails to meet its burden of proof.

DECISION

American Body Armor & Equipment, Inc. (ABA), protests under request for proposals (RFP) No. 1111-82000, issued by the Department of State (DOS) for fully armored cars. The protester objects to certain provisions of the solicitation; challenges the results of the tests conducted on armor

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samples; and maintains that the contracting officials acted with bias and favoritism.^{1/}

We deny the protest in part and dismiss it in part.

The RFP called for a firm, fixed-price requirements contract for the supply of an indefinite quantity of a variety of certain armored vehicles. Proposals were due 2 months later, on February 1, 1989. On that date, the agency issued an amendment extending the closing date to February 24. The RFP required that on or before the specified date and time for receipt of proposals, offerors were to submit samples of the opaque (steel) and transparent (glass) armor they proposed to incorporate in the vehicles for testing by an independent testing laboratory, which would verify whether the materials the offeror proposed to use complied with the technical requirements specified in the solicitation. Concerning the test samples, the RFP stated in section L, paragraph 2.1 (General content-proposal) and in section M, paragraph 3 (Evaluation of samples) that if an offeror's samples failed to meet the standards stated in the RFP that offeror's proposal would be deemed unacceptable and would not be further considered for award.

The record indicates that ABA submitted its test samples to the independent testing laboratory on January 27, and by letter dated February 22, authorized the testing firm to

^{1/} The protester also has complained about certain actions by the DOS which do not directly concern the selection of a contractor under this procurement but which the protester alleges are breaches of security. First, the protester objects to the fact that in its report to our Office, copies of which the DOS provided to the interested parties (the other offerors), the DOS generally referred to "the test failures in ABA samples." The DOS did not regard this generalized information as classified and we have no reason to conclude otherwise. ABA should have anticipated that the DOS would provide to the other offerors copies of the agency's report to our Office, in which it discussed in general terms the bases for protest and the agency's position in response thereto, because that is required under our published Bid Protest Regulations, 4 C.F.R. § 21.3(i) (1989). Second, we also understand ABA to maintain that a DOS employee violated security procedures by mentioning purportedly classified information over an unsecured telephone line to an ABA employee who lacked the proper security clearance. This is not a basis of protest that is cognizable under our Bid Protest Regulations.

proceed with the ballistics penetration testing of those samples. The protester was subsequently advised that the testing laboratory had identified a failure in one of ABA's opaque armor samples and in its transparent armor sample.

ABA, by letter, requested a meeting with contracting officials for the purpose of resolving the matter of any possible "disqualification," and stated that in the alternative it would protest any agency action to exclude it from the competition. When ABA apparently received no response to its written request,^{2/} it filed the protest in this Office.

The contracting agency states that it was preparing to decide whether a competitive range determination could be made at the time ABA's protest was filed. Although the DOS has not proceeded with a competitive range determination during the pendency of this protest, it has defended the testing procedure and the validity of the results reported by the independent testing laboratory.

With regard to the propriety of the tests conducted on its samples, the protester does not deny that its opaque sample failed to meet the required test standards; rather, it has tacitly admitted that the sample was not adequate to meet the standards set forth in the RFP (although ABA states the sample "did not 'entirely' fail," since it was "effective in some instances.") ABA argues, however, that for any such armor to meet the stated requirements, it would have to be so thick as to exceed the vehicle weight restrictions, and since, it speculates, all offerors submitted material manufactured by the same company, those samples that passed the test must have exceeded the weight limitations. The protester also alleges that the agency extended the date for the submission of samples to allow other offerors more time to obtain conforming samples, but that it submitted the best samples it could obtain within the time available in order to comply with the (initial) due date stated in the RFP.

To the extent that ABA is alleging that the test standards could not be met by armor that would also comply with the weight restrictions and that insufficient time was allowed for offerors to obtain appropriate armor samples, its complaint is untimely, because it concerns alleged solicitation improprieties not raised prior to the closing date

^{2/} The record indicates that the agency may not have received ABA's letter because of misinformation or confusion as to the Washington, D.C. area address to which it was to be sent.

for submission of proposals. 4 C.F.R. § 21.2(a)(1). In any event, the record does not show that the agency permitted other offerors to submit their samples after the date they were due. The record confirms that all samples were submitted by the extended closing date, February 24, which was also the date by which, as previously stated, the solicitation required that samples be submitted. The protester did receive and acknowledge a copy of the amendment. It therefore had the same opportunity as any other offeror to submit its armor samples. We note, incidentally, that in its comments on the agency report and protest conference, the protester concedes that even if it had understood it had until February 24 to submit samples, it could not have provided opaque samples conforming to the specifications by that time.

As for the ballistics tests performed on other offerors' opaque armor samples, we are limited in our discussion because certain specific information is classified and because this negotiated procurement is still in progress. As we indicated above, the protester speculates that other offerors must have passed the tests by using armor samples of such a thickness that the total permissible weight of the vehicle would be exceeded. The DOS points out, however, that the thickness of the armoring material is only one factor which determines its effectiveness; other factors, such as the material's composition and the manner in which it is heat-treated also are important. As a result, the agency asserts--and our review of the record confirms--other offerors passed the ballistics tests with samples which were of a lesser thickness than that which the protester claims they must have submitted.

ABA also contends that its transparent armor sample should not have been rejected since, although an interior spall (chip or splinter) resulted during testing, it did not damage the witness plate.^{3/} The agency responds, and the protester has not disputed, that in generic and unclassified terms the solicitation requires the transparent armor to "totally defeat" the projectile, which ABA's sample did not

^{3/} The "witness plate" or "panel" is a sheet of material which is placed behind the armor being tested and which records, or "witnesses," the effect of the impact of a projectile upon the armor sample, such as penetration by the projectile.

do. Thus, the agency states, ABA's position is inconsistent with the solicitation requirements. In any event, the protester has not pursued this contention in its comments on the agency report and bid protest conference. We, therefore, consider this protest issue to have been abandoned. See Universal Hydraulics, Inc., B-235006, June 21, 1989, 89-1 CPD ¶ 585.

In summary, we find that the armor sample testing requirements were clearly set forth in the solicitation and that the protester participated in the procurement, including the requirements for submission of samples, without protest, until it perceived that it may be eliminated from the competition because of deficiencies in the sample armor it submitted. As we stated above, it is too late at that point to object on the basis that not enough time had been allowed for proper samples to be obtained or that the specifications were inherently defective in that the ballistic requirements could not be achieved within the vehicle weight limitations set forth in the RFP. In addition, we have no basis on which to conclude that the samples were improperly tested.

ABA further alleges that the evaluation scheme of the RFP, under which technical factors and price constitute 65 percent and 35 percent of the evaluation weight, respectively, is designed in a manner which provides "an open invitation" to contracting officials "to engage in favoritism" This protest basis constitutes an untimely allegation of a solicitation defect since it was not protested prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1).

Finally, ABA alleges bias and otherwise improper conduct on the part of certain of the agency's contracting officials in that: (1) the agency failed to provide the protester with documentation concerning the administration of prior contracts, which the protester requested pursuant to 4 C.F.R. § 21.3(c), for the purpose of showing that certain of the contracting officials have historically conducted procurements for armored vehicles unfairly; (2) serious attention was not given to a model armored vehicle ABA presented for inspection; and (3) confidential information concerning its proposal and test results has been improperly disclosed to ABA's competitors.

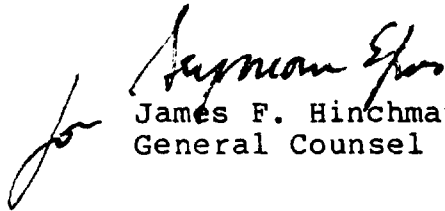
We note that the first two of these allegations are not relevant to the subject procurement. Even if the agency had provided the requested information concerning previous contracts, the actions of contracting officials with respect to the administration of those contracts would not provide evidence of improprieties with respect to the conduct of

this procurement, since each procurement must stand on its own proprieties. Personnel Decisions Research Inst., B-225357.2, Mar. 10, 1987, 87-1 CPD ¶ 270 at 7. Thus, the requested documents were not relevant to this protest, and for this reason, we did not require their disclosure under the document request provisions of our Bid Protest Regulations. 4 C.F.R. § 21.3(c).

Concerning the second of these allegations, there is no indication of record that, at this point in the procurement, offerors have been required or requested to produce for display or inspection model vehicles they have armored.

The third of these allegations, that agency personnel biased against the protester have disclosed competition sensitive information, is stated in the form of rumor and speculation. This is not an adequate basis for attributing prejudicial motives or bias to agency officials. Metrolina Medical Peer Review Foundation, B-233007, Jan. 31, 1989, 89-1 CPD ¶ 97.

The protest is denied in part and dismissed in part.


James F. Hinchman
General Counsel